

Construction Contract Guidelines



**Office of Economic Development
Procurement Branch**
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INDEX

CCG1	Statement of Purpose	1
CCG2	Definitions	1
CCG3	Requirement to Solicit Competitive Bids	4
CCG4	Content of Invitation to Bid	5
CCG5	Registration Requirements	5
CCG6	Selection From Vendor Registry	5
CCG7	Prequalification of Bidders	5
CCG8	Invitation to Bid Prequalified Contracts	6
CCG9	Estimation of Contract Value	6
CCG10	Non-Disclosure of Estimated Contract Value	6
CCG11	Queries of Bid Documents	6
CCG12	Inclusive Nature of the Bid Documents	6
CCG13	Information in the Bid Documents	6
CCG14	Bid Security	7
CCG15	Certificate of Recognition Program - Letter of Good Standing	7
CCG16	Return of Contract Security	8
CCG17	Replacement of Contract Security	8
CCG18	Contract Insurance	8
CCG19	Workers Compensation Act	8
CCG20	Permission to Withdraw	8
CCG21	Amendments to Bid Documents	8
CCG22	Adjustments to Closing Time	8
CCG23	Cancellation of Invitation to Bid	9
CCG24	Bid May be Amended or Withdrawn	9
CCG25	Closing Time for Bids	9
CCG26	Receipt of Bids to be Recorded on Documents	9
CCG27	Information Included in Bids	9
CCG28	Late Bids	9
CCG29	Execution of Bids	9
CCG30	Errors in Contract Value	10
CCG31	Words and Numbers Conflict	10
CCG32	Rejection of Timely Bids	10
CCG33	Equipment, Product and Material Specification and Standard	10
CCG34	Bid Evaluation	10
CCG35	Identical Bids	11
CCG36	Notice Award/Rejection	11
CCG37	Notice of Award	11
CCG38	Effect of Bids Higher than the Estimated Contract Value	11
CCG39	Bid Depository	12
CCG40	Rules of Bid Depository	12
CCG41	Form of Contract	12
CCG42	Payments Under Contract	12
CCG43	Holdbacks	13

CCG44	Payment on Completion of Contract	13
CCG45	Taxes to be Paid	13
CCG46	Taxes Not to be Paid	13
CCG47	Building Permits	13
CCG48	Changes Permitted	13
CCG49	Relations of Contractor and Subcontractor	13
CCG50	Relations of Contracting Authority and Subcontractor	14



CCG1 STATEMENT OF PURPOSE

- .1 These guidelines provide for a process which sets the conditions for the administration of the Province of Nova Scotia Construction Contracts. The objective of these guidelines is to maintain a high level of confidence in the bid process by ensuring that bidding is fair, equitable, consistent, predictable, efficient, and undertaken in an open and competitive manner.
- .2 The Government Procurement Policy of January 1996, the Atlantic Procurement Agreement, the Agreement on Internal Trade and the Office of Economic Development, Procurement Branch Instructions provide the framework within which these guidelines have been formulated.
- .3 These guidelines are not a substitute for the specifications of a particular project, but highlight certain fundamental principles of the bidding and contracting process.
- .4 The guidelines have been developed in consultation with the Nova Scotia Construction Association.

CCG2 DEFINITIONS

- .1 Bid:
An offer submitted in response to an invitation to bid.
- .2 Bid Closing Time:
The time up to which bids will be accepted and beyond which bids will be rejected.
- .3 Bidder:
A person, firm or corporation who submits a bid.
- .4 Bidding Period:
A time provided to prospective bidders to assemble and submit their Bid. Further defined as the time period between the Invitation to Bid and the Bid Closing Time.
- .5 Bid Security:
A promise to pay to the contracting authority its costs of accepting another bid, up to a limit, specified in bid document, if the bidder is notified of the contracting authority's intent to award a contract and fails to enter into the required contract.
- .6 Competent Bid:
The low responsive bid submitted by a responsible contractor or supplier is

deemed to be the lowest competent bid.

.1 Responsible:

A responsible supplier is one who is capable in all respects to perform the contract.

.2 Responsive:

To be considered responsive, a proposal, bid or offer must meet all requirements stipulated in the invitation. Bids are deemed to be non-responsive if they fail to meet any mandatory requirement set out in the bid solicitation.

.7 Completion of the Contract:

Completion of the Contract shall have been reached when the work has been certified as being complete and any deficiencies documented during the specified warranty period have been corrected as so certified by the Consultant and/or the Minister.

.8 Completion of the Work:

Completion of the work shall have been reached when all construction and all deficiencies documented at the time of Substantial Completion Certification have been corrected, and so certified by the Consultant and/or the Minister.

.9 Construction:

Construction means a construction, reconstruction, demolition, repair or renovation of a building, structure, road, bridge or other engineering or architectural work. It does not include professional consulting services related to the construction contract, unless they are included in the procurement.

.10 Contract Price:

The set amount of money considered and agreed to by both parties for the execution of the work as described in the Bid Documents.

.11 Contracting Authority:

Any government body or government employee having authority to enter into a contract on behalf of the Government of Nova Scotia.

.12 Contractor:

The Contractor is the person, firm or corporation identified as such in the Contract.

.13 Evaluation Criteria:

Evaluation criteria are the standards and measures used to determine how satisfactorily a bid has addressed the requirements identified in the bid documents.

- .14 **Invitation to Bid:**
An invitation to bid (also referred to as request for bids or request for quotations) solicits competitive bids. It is used when the requirement is adequately defined to permit the evaluation of bids against clearly stated criteria and specifications. The bid document describes the specifications to be met and the terms and conditions that will apply.
- .15 **Irrevocable Standby Letter Of Credit:**
A form of Bid, Performance, Payment and Warranty Security issued by a certified financial institution subject to the Uniform Customs and Practices for Documentary Credits (1993 Revision) International Chamber of Commerce (Publication No. 500), for a sum as specified in the Invitation to Bid. The Irrevocable Standby Letter of Credit will remain in effect until the Certificate of Completion of the Contract is issued.
- .16 **Public Advertisement:**
A public advertisement means advertising in the public media with provincial circulation. In addition, public advertisement includes a Notice posted on the Nova Scotia Electronic Bid Notice System.
- .17 **Public Tenders Office:**
An office of the Office of Economic Development Procurement Branch which administers the bidding process on behalf of Departments, Boards, Commissions and Agencies of the Government of Nova Scotia.
- .18 **Rejected Bid:**
A bid that is not considered on the basis that it does not meet the requirements specified in the Bid Documents.
- .19 **Subcontractor:**
A Subcontractor is a person, firm or corporation having a contract with the Contractor to perform a part or parts of the Work, or to supply products worked to a special design according to the Contract Documents, but does not include one who merely supplies products not so worked.
- .20 **Substantial Completion of the Work:**
Substantial Completion shall have been reached when the Work is ready for its intended use and when the work to be done under this Contract is capable of completion or correction at a cost of not more than one percent of the contract price as so certified by the Consultant and/or the Minister.
- .21 **Supplier:**
One who furnishes material not worked to a special design.
- .22 **Vendor Registry:**

A centrally managed database containing those vendors who have expressed an interest in participating in the government bidding process. The database includes the name and address and a listing of the vendor's capabilities or the type of work for which they wish to be considered. (For registration details, vendors are to contact the Procurement Branch, Office of Economic Development.)

CCG3 REQUIREMENT TO SOLICIT COMPETITIVE BIDS

- .1 The Contracting Authority shall invite bids prior to entry into any contract, subject to the following:
 - .1 Construction requirements with an estimated value of up to \$5,000 will be acquired by the departments at competitive prices, in accordance with procedures established by the Procurement Branch, Office of Economic Development.
 - .2 Construction requirements with an estimated value from \$5,000 to \$100,000 will be posted on the Nova Scotia Electronic Bid Notice System. In addition, bids or proposals may be invited from a minimum of three suppliers and/or publicly advertised where required to ensure an adequate degree of competition.
 - .3 Construction requirements with an estimated value greater than \$100,000 will be publicly advertised. In addition, bids or proposals may be invited from a minimum of three suppliers where required to ensure an adequate degree of competition.
- .2 Conditions where alternative procurement practises may be used are identified in the Province of Nova Scotia Policy on Government Procurement, and, for construction, include:
 - .1 An unforeseeable situation of urgency or emergency where the goods, service, or construction requirement cannot be obtained by means of open procurement procedures.
 - .2 A situation where bidding could reasonably be expected to compromise government confidentiality, cause economic disruption, or otherwise be contrary to the public interest.
 - .3 To ensure compatibility with existing products; to recognize exclusive rights, licenses, copyright, and patent rights; or to maintain specialized products that must be maintained by the manufacturer or its representative.
 - .4 Where, for technical reasons, there is an absence of competition, and the goods or services can be supplied by only a particular supplier and no alternative or substitute exists.
 - .5 The procurement of goods or services for which there is a statutory monopoly that is controlled by a supplier.
 - .6 Work to be performed on or about a leased building, or portions thereof, that may be performed only by the lessor.
 - .7 Work to be performed according to the provisions of a warranty or

- guarantee.
- .8 Processes that foster the development of minority businesses.
- .9 Processes that foster the development of sheltered workshop programs.
- .10 Where the procurement relates to the products or services of persons with disabilities, philanthropic institutions, prison labour or to employment equity programs.

CCG4 CONTENT OF INVITATION TO BID

- .1 It shall contain at least the following information:
 - .1 A brief description of the procurement contemplated.
 - .2 The place where a person may obtain information and Bid Documents.
 - .3 The conditions of obtaining the Bid Documents.
 - .4 The place where the bids are to be sent.
 - .5 The date and time limit for submitting bids.
 - .6 The time and place of the opening of the bids in the event of a public opening.
 - .7 A statement that the procurement is subject to the Atlantic Procurement Agreement and Agreement on Internal Trade.

CCG5 REGISTRATION REQUIREMENTS

- .1 The successful contractor and subcontractors must comply with the Nova Scotia Corporations Registration Act or Partnerships and Business Names Registration Act before a contract is awarded to them by the Minister.

CCG6 SELECTION FROM VENDOR REGISTRY

- .1 The Contracting Authority shall select names of invitees to bid from the vendor registry based on:
 - .1 Bidder's Previous Performances.
 - .2 Qualifications of Bidder.
 - .3 Geographical Location.

Note: Bidders shall be added to the initial list of invitees on request, subject to acceptance on the basis of:

- (a) Bidder's Previous Performance
- (b) Qualifications of Bidders

CCG7 PREQUALIFICATION OF BIDDERS

- .1 Where a Contracting Authority wishes to prequalify bidders before issuing an invitation to bid for a contract, it shall publicly advertise for bidders to submit their qualification for work of a specified nature for a specific contract.
- .2 Only those bidders who are deemed as qualified shall be issued Bid Documents.

- .3 The Contracting Authority shall not add the name of a bidder to the qualified bidder short list except through the evaluation and acceptance of the bidder's qualification as submitted in response to the prequalification process.

CCG8 INVITATION TO BID PREQUALIFIED CONTRACTS

- .1 Bidders on qualified short list shall be invited to bid for the specific contract for which they are prequalified. Qualified bidder short lists shall be updated with such frequency as to ensure new bidders are not unnecessarily prevented from registering for bidding opportunities.

CCG9 ESTIMATION OF CONTRACT VALUE

- .1 The Contracting Authority shall use its best efforts to establish value of the work and have funds approved prior to invitation to bid.

CCG10 NON-DISCLOSURE OF ESTIMATED CONTRACT VALUE

- .1 The Contracting Authority shall not disclose the estimated contract value.

CCG11 QUERIES OF BID DOCUMENTS

- .1 Questions relating to the Bid Document must be directed to the designated contact person. Requests for changes or clarifications must be in writing, and the Contracting Authority will only be bound by its written response, which shall be by way of addendum provided to known bidders.

CCG12 INCLUSIVE NATURE OF THE BID DOCUMENTS

- .1 Terms and conditions of the contract are as stated in the Bid Documents.

CCG13 INFORMATION IN THE BID DOCUMENTS

- .1 The Bid Documents shall include the following information:
 - .1 Terms and conditions for submission of bids including:
 - .1 Form on which bids are to be submitted.
 - .2 Bid/Performance/Payment Security Requirements.
 - .3 Information requested to be provided in the bid.
 - .4 Time and place of Bid opening.
 - .5 Acceptability of a Bid submitted by facsimile.
- .2 The Bid Documents will generally include the following information:
 - .1 Full description of goods or services required.
 - .2 The form, amount, terms and conditions of bid/performance/payment security.
 - .3 Requirement that Bids are to be submitted on mandatory forms supplied by the Contracting Authority.

- .4 Requirement that Bids are to be unconditional.
- .5 Completion date or other timing considerations.
- .6 Method of calculation of liquidated damages/early completion premium.
- .7 Payment terms.
- .8 Evaluation criteria.
- .9 Name and title of the designated contracting authority contact.
- .10 Other relevant information.

CCG14 BID SECURITY/CONTRACT SECURITY

- .1 When the value of a contract is estimated to be:
 - .1 Equal or greater than \$100,000, the bid/performance/payment security shall be either bonds on Government of Nova Scotia prescribed forms, Irrevocable Standby Letters of Credit or Certified Cheques in amounts specified in the Bid Documents.
 - .2 Less than \$100,000:
 - .1 Bid security may be required.
 - .2 The performance/payment security shall be provided only by the successful Bidder, after selection but prior to signing the contract. Contract security shall be either bonds on Government of Nova Scotia prescribed forms, Irrevocable Standby Letters of Credit or Certified Cheques in amount specified in the Bid Documents.
- .2 When a Bidder enters into a Contract(s) with a subcontractor in an amount exceeding \$50,000, the Subcontractor will be required to provide to the Bidder Subcontract Security as defined in CCG14.1.1.
- .3 If a bidder is notified of the Minister's intent to award a contract and fails to enter into the contract, the Contracting Authority may retain the bid security to an amount required to pay the extra costs incurred as a result of the bidder's failure to enter into the contract up to limit specified in bid documents.

CCG15 CERTIFICATE OF RECOGNITION PROGRAM - LETTER OF GOOD STANDING

- .1 The Occupational Health and Safety Requirements of all contracts dictate that any prospective contractor and sub-contractor must meet the minimum standards of the Province of Nova Scotia. Prior to contract award, the successful bidder must provide a Certificate of Recognition issued jointly by the Nova Scotia Department of Labour and an occupational health and safety organization approved by Nova Scotia Department of Labour, or a valid Letter of Good Standing from an occupational health and safety organization approved by Nova Scotia Transportation and Public Works indicating the Contractor is in the process of qualifying for the Certificate of Recognition. Similarly, subcontractors must provide certification within the period of time as stipulated in the Bid Documents.

CCG16 RETURN OF CONTRACT SECURITY

- .1 Where a deposit held as contract security is no longer required by the terms of the contract, the Contracting Authority shall return any unused portion of the deposit to the contractor.

CCG17 REPLACEMENT OF CONTRACT SECURITY

- .1 Within 10 days of award of contract, the contractor may replace the contract security, provided the replacement security is in the form of a bond, irrevocable standby letter of credit, or certified cheque in the amount specified.

CCG18 CONTRACT INSURANCE

- .1 The Contracting Authority may require the contractor to provide insurance. The form and amount of any insurance required shall be defined in the Bid Documents.
- .2 Where insurance is required:
 - .1 The contractor shall not start work under the contract until proof of the required insurance has been received by the Contracting Authority.

CCG19 WORKERS COMPENSATION ACT

- .1 The Contracting Authority may require the contractor to furnish evidence of coverage under the Worker's Compensation Act, R.S.N.S. and a Clearance Certificate indicating the Contractor, Sub Contractor(s) and other Contractor(s) are in good standing.

CCG20 PERMISSION TO WITHDRAW

- .1 The Contracting Authority may, upon receipt of bona fide evidence, permit the withdrawal of a Bid prior to award if such evidence, in the sole opinion of the Contracting Authority, clearly indicates a serious demonstrable error has been made in the preparation of the bid.

CCG21 AMENDMENTS TO BID DOCUMENTS

- .1 Bid Documents may be amended by the Contracting Authority by the issuance of a written addendum not less than five business days before bid closing time.

CCG22 ADJUSTMENTS TO CLOSING TIME

- .1 When an addendum is issued, the closing time shall, where necessary, be adjusted to reasonably allow bidders to receive the addendum and adequately consider, prepare and submit their bids, taking into account the impact of the addendum.

CCG23 CANCELLATION OF INVITATION TO BID

- .1 An invitation to bid may be cancelled at any time prior to award.

CCG24 BID MAY BE AMENDED OR WITHDRAWN

- .1 A Bidder may withdraw or amend a bid prior to the closing time.

CCG25 CLOSING TIME FOR BIDS

- .1 Closing time shall be selected to reasonably allow for distribution of the invitations and the preparation of bids.
- .2 The tendering period for publicly advertised invitations shall be a minimum of 15 calendar days, except where urgency may require a shorter period.

CCG26 RECEIPT OF BIDS TO BE RECORDED ON DOCUMENTS

- .1 The date, time and place of receipt of a bid shall be recorded on the bid envelope or the facsimile cover sheet as the case may be.

CCG27 INFORMATION INCLUDED IN BIDS

- .1 Bids shall contain the following information:
 - .1 The bid amount.
 - .2 An offer to enter into a contract which may be made by reference to the Bid Documents.
 - .3 The name of the person, firm, or corporation submitting the bid and authorized signature(s).
 - .4 A telephone number or facsimile number or address to which notifications may be sent to the bidder.
 - .5 Other information or documents requested in the Bid Documents.

CCG28 LATE BIDS

- .1 The Contracting Authority shall reject bids received after the closing time.
- .2 Late bids shall be returned to the Bidder. In the case of sealed bids, they shall be returned unopened.

CCG29 EXECUTION OF BIDS

- .1 A bid shall be signed by the person or persons authorized to make the bid on behalf of the person, firm or corporation that is submitting the bid.
- .2 When specified in the Bid Documents amendments to a bid may be submitted by facsimile transmission.
- .3 Facsimile transmissions indicating amendment to a price, a change or withdrawal will be accepted up to bid closing in accordance with the

- requirements of the Public Tenders Office.
- .4 Amendments must be signed by the same person who made the original bid on behalf of the bidder.
 - .5 A written bid shall be submitted in an envelope which clearly identifies it as a bid submitted in response to the invitation to bid.
 - .6 Bids and security must bear original signatures.
 - .7 Public Tenders Office time calculation will govern.

CCG30 ERRORS IN CONTRACT VALUE

- .1 Where unit prices are requested and the bid contains an error in calculating the estimated contract value, the unit price shall prevail.

CCG31 WORDS AND NUMBERS CONFLICT

- .1 Where the bid is requested in both words and numbers, and the two are in conflict, words shall prevail.

CCG32 REJECTION OF TIMELY BIDS

- .1 The Contracting Authority will reject a bid where:
 - .1 It is not submitted in the required form.
 - .2 There are omissions of significant information.
 - .3 A bid is not signed as required.
 - .4 The required bid security in the required form is not provided.
 - .5 The bid has conditions attached which are not authorized by the Bid Documents.
 - .6 The bid fails to meet one or more standards specified in the Bid Documents.
 - .7 Addenda have not been acknowledged.
 - .8 Any other defect which, in the sole opinion of the Contracting Authority, brings the meaning of the bid into question.

CCG33 EQUIPMENT, PRODUCT AND MATERIAL SPECIFICATION AND STANDARD

- .1 Specification and standards shall not be used for the sole purpose of limiting competition.

CCG34 BID EVALUATION

- .1 The Contracting Authority reserves the right to reject any and all Bids or accept any Bid which in the sole opinion of the Contracting Authority is in its best interest.
- .2 In the evaluation of a bid, the Contracting Authority will consider but not be limited to the following criteria:

- .1 Bid price submitted.
 - .2 Compliance with Bid Documents.
 - .3 The experience of the bidder with similar projects in size and scope.
 - .4 Completion date.
- .3 In the event that an award is made to other than the lowest price bidder, written explanation of the reasons for the award shall be given to Bidders, on request to the Contracting Authority.
 - .4 Award approvals and reporting shall be conducted in accordance with the Government of Nova Scotia Procurement Policy and Process.

CCG35 IDENTICAL BIDS

- .1 Where two or more bids are identical, the successful bidder shall be selected by a coin toss by the Contracting Authority in the presence of the identical bidders.

CCG36 NOTICE AWARD/REJECTION

- .1 After the Contracting Authority has accepted a bid, the successful bidder will be notified in writing and the bid security of the unsuccessful bidders will be returned.
- .2 Notices of award and rejection will be in writing.

CCG37 NOTICE OF AWARD

- .1 The notice of award constitutes a binding letter of acceptance and obligates the bidder to begin the work and sign the formal contract.

CCG38 EFFECT OF BIDS HIGHER THAN THE ESTIMATED CONTRACT VALUE

- .1 Where all Bids submitted in response to an invitation to bid are higher than the estimated contract value, bids shall not necessarily be invalidated for this reason.
- .2 If the lowest competent Bid is within 15% of the estimated contract value, the Contracting Authority may choose to:
 - .1 Award the contract for the bid amount.
 - .2 Negotiate changes in the scope of the work with the lowest competent bidder to achieve an acceptable contract price.
- .3 Failing negotiation, or if the lowest Competent Bid is greater than 15% over the estimated contract value:
 - .1 The Contracting Authority may make changes in the scope of work and invite the three lowest competent original Bidders to rebid.
 - .2 If these invited Bids fail to bring a Bid to within 15% of the estimated

contract value and subject to confirmation of the Contracting Authorities budget, the Contracting Authority may take whatever action which in its opinion will result in an acceptable contract price.

CCG39 BID DEPOSITORY

- .1 The Bid Depository of Nova Scotia system of bid collection may be used for suitable subcontract classifications as applicable to the project provided that in the opinion of the Contracting Authority:
 - .1 The process does not limit the number of prime or trade bidders.
 - .2 The potential for interference with free market forces is minimal compared to benefits to be achieved.
- .2 When the Bid Depository is used, it will apply to:
 - .1 Conventional general contract bids for projects with an estimated value of \$1,000,000 or greater.
 - .2 Trade sections where the estimated value of the work of the trade section is equal to or greater than 10% of the estimated value of the project based on the Contracting Authority's estimates.
 - .3 Any other trade section which in the opinion of the Contracting Authority constitutes a critical element of work and merits inclusion.

CCG40 RULES OF BID DEPOSITORY

- .1 The rules of the Bid Depository shall apply subject to any amendments provided by the Contracting Authority to the Bid Depository.

CCG41 FORM OF CONTRACT

- .1 The contract form shall be the standard form used by the Contracting Authority, or a form acceptable to both parties under the contract.

CCG42 PAYMENTS UNDER CONTRACT

- .1 The contract shall provide the basis on which payments under the contract will be made.
- .2 Proof of payment to subcontractors and suppliers will be in the form of a statutory declaration provided by the general contractor.
- .3 Where a subcontractor or supplier claims not to have been paid the amount due under contract 30 days after it is due, the subcontractor or supplier may file a notice of claim with the Contracting Authority within 60 days after the initial 30 day period. The Contracting authority will retain the disputed amount with notice to the contractor for 60 days from the notice of claim if the claim is not settled by agreement. If, after the 60 days has elapsed the claim is not settled by agreement subject to agreed-to dispute resolution or court process, the

Contracting Authority shall pay the disputed amount to the contractor.

CCG43 HOLDBACKS

- .1 The Contracting Authority may require that payments under the contract be limited by holdbacks which must be clearly defined in the contract.
- .2 The Contracting Authority may specify in its bid documents to have progressive release of holdback for trade contractors and subcontractors on specified projects.

CCG44 PAYMENT ON COMPLETION OF THE WORK

- .1 Upon completion of the work according to its requirements, and following receipt of any statutory declarations, the Contracting Authority shall release all funds due and payable to the contractor, with the exception of any holdbacks properly retained.

CCG45 TAXES TO BE PAID

- .1 Taxes which are the responsibility of the contractor will be defined in the Bid Documents.

CCG46 TAXES NOT TO BE PAID

- .1 The Contracting Authority will indicate in the bid documents whether or not taxes are applicable to all or part of the work, and the method of calculation and recording.

CCG47 BUILDING PERMITS

- .1 Municipal building permits are not required on projects administered by the Contracting Authority.

CCG48 CHANGES PERMITTED

- .1 Nothing in these guidelines shall prohibit the Contracting Authority from issuing change orders to accommodate changes in scope, schedule or price of the contract. The value of such changes will be in accordance with the terms and conditions of the contract.

CCG49 RELATIONS OF CONTRACTOR AND SUBCONTRACTOR

- .1 The contractor must bind every subcontractor to the terms and conditions of the standard form of Contract between the Minister and Contractor, as far as applicable to the subcontractor's work.

CCG50 RELATIONS OF CONTRACTING AUTHORITY AND SUBCONTRACTOR

- .1 Nothing in these guidelines or terms and conditions of the contract shall create contractual relations between the subcontractor and the Contracting Authority.



